IN THE HIGH COURT OF KERALA AT ERNAKULAM

PRESENT :

THE HONOURABLE MR. JUSTICE M.N.KRISHNAN

MONDAY, THE 9TH JULY 2007 / 18TH ASHADHA 1929

WP(C).No. 20970 of 2007(U)

AGAINST THE ORDER DATED 28/07/2004 IN IA.1472/2004 IN CMA.12/2004 of SUB COURT,NEYYATTINKARA
OS.123/1987 of II ADDL.M.C.,NEYYATTINKARA

PETITIONER:

LEELA, D/O.YACOB, KOOVAKANDOM VEEDU, KEEZHUKOLLA DESOM, CHENKAL VILLAGE.

BY ADV. SRI.B.KRISHNA MANI

RESPONDENTS:

1. **MUTHAMMA THANKAMONY, PARAMBUTHARISU VEEDU, KEEZHUKOLLA DESOM, CHENKAL VILLAGE.**
2. **DASAMMA, W/O.YACOB, KANNIYOTTUKONAM, POOVAKANDAM VEEDU, KEEZHUKOLLA DESOM, CHENKAL.**
3. **RENJITHAM, -DO-,-DO-.**
4. **ESAIKEL SAHAYADAS, KOOVAKANDAM VEEDU, KEEZHUKOLLA DESOM, CHENKAL VILLAGE.**
5. **JOICE, KANNIYOTTUKONAM, -DO-,-DO-.**
6. **OMANA, MANNAKKALLU, KANAKKARAKKATTU VEEDU, KAZHIVOOR DESOM, KANJIRAMKULAM VILLAGE.**
7. **BINU, -DO-, -DO-.**
8. **BIJU, -DO-, -DO-.**
9. **BAIJU, -DO-, -DO-.**
10. **LEENAKUMARI, W/O.LATE J.DAS,**

KRIPA BHAVAN, T.C.NO.4/2140(5), MALAPPALAM, PATTOM.

11. VARUN, -DO-, -DO-.

12. VARUNIMA, -DO-, -DO-.

BY

THIS WRIT PETITION (CIVIL) HAVING COME UP FOR ADMISSION ON 09/07/2007, THE COURT ON THE SAME DAY DELIVERED THE FOLLOWING:

M.N. KRISHNAN, J.

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W.P.C. NO. 20970 OF 2007

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Dated this the 9th day of July, 2007.

J U D G M E N T

This writ petition is preferred seeking to set aside the order of the Sub Judge, Neyyattinkara in the interlocutory application filed along with CMA 12/04 and the order passed in the CMA. The brief facts necessary for the disposal of the writ petition are as follows. A suit for redemption was filed and an exparte preliminary decree was passed in the year 1987. Thereafter, a final decree application was filed in the year 2001 and a final decree was also passed on 21.3.01. Thereafter the present writ petitioner moved an application for setting aside the preliminary decree as well as the final decree on the ground of want of service of notice. The Court below rejected it, against that a CMA was filed with a petition to condone the delay of 570 days. The Court after taking into consideration the entire materials found that there is no reason to condone the delay of 570 days and therefore dismissed that application. It is against that decision the present writ petition is filed.

2. I am fully conscious of the fact that principles of natural justice warrants an opportunity of being heard to the parties before finally disposing the matter. But, an equal caution is also there, if the party is guilty of gross negligence or grave misconduct no such indulgence need to be shown and it will not be within the jurisdiction of the Court to find it as a sufficient cause for condoning the delay.

3. Now the learned counsel would submit regarding the legal principles on which notice has to be issued to the party. I had gone through the order of the trial court which says that personal notice had been served at the preliminary stage on the 5th defendant and what ever may the mode of service when one gets a personal service it is the end of it. The learned counsel had cited before me a decision of this Court reported in ***Mohan Traders v. AVM Cattle & Poultry Feeds (1979 KLT 866)***. What has laid down in that decision was that personal service is the rule and the service by registered post is only an addition to the personal service.

So the intention of the legislation behind issuance of notice is to see that as far as possible the party is personally served with notice. In paragraph 6 of the trial court's order it is extracted as follows:

"The records of the trial court would show that the summons and notices were served to the 5th defendant directly, before passing the preliminary decree as well as the final decree."

So, there had been direct service of notice on this 5th defendant before the Court proceeding further. Thereafter, it can be seen that the conduct of the writ petitioner is not correct. Even in filing the CMA against the order of dismissal of the petition for setting aside the exparte decree there has been a delay of 570 days on the ground that she was laid up with rheumatism. On a perusal of the record would show that her husband was also a party to the proceedings.

4. This is a classical case where materials available even without evidence would show the case of gross

negligence and grave misconduct. Therefore, I am convinced that the Sub Judge has not committed any error in dismissing the application to condone the delay in filing the CMA and it does not call for any interference.

Lastly, the learned counsel would contend that the tenant is entitled to the value of improvements under the Compensation of Tenants Improvements Act, 1958. It is not a matter which I should consider in this writ petition. From these discussions, I do not find any merit in this writ petition and therefore the writ petition lacks merit and it is dismissed.

M.N. KRISHNAN, JUDGE.

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